IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 324 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRABHAI @ MADHABHAI VITHALBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR NITIN M AMIN for Petitioner

MR KC SHAH, APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

and

MR.JUSTICE H.H.MEHTA

Date of decision: 22/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE C.K.BUCH)

1. This is an appeal preferred by a life convict -appellant herein against the judgment dated 31.3.1990 rendered by ld. Addl. Sessions Judge, Ahmedabad in Sessions Case No.671/89 whereby the ld. Addl. Sessions Judge convicted the appellant accused for the offence punishable under sections 452 & 302 of the I.P.Code and sentenced the appellant accused to suffer R/I for 1 (one) Year and to pay a fine of Rs.3000/ (Rs. three thousand only) I/d to undergo further R/I for three months for the offence punishable under sec.452 of IPC and sentenced the appellant accused to suffer R/I for life and to pay a fine of Rs.7000/ (Rs. Seven thousand only) I/d to undergo further R/I for 1 (one) Year for the offence punishable under sec.302 of IPC. Ld. Judge also directed the substantive sentences to run concurrently.

2. According to the prosecution case, the accused and deceased Naransing were serving as Security Guards in Perfect Security Service which institution renders services of Watch Guard to its clients. Gujarat State Civil Supplies Corporation situated in Sector 21 of Gandhinagar, is taking service of Security Guard from said Perfect Security Service. It is the prosecution case that on 6.9.1989, the present accused and other security guards namely Nuru Islamkhan, Vasantkumar and Savantsinh were on duty from 12.00 midnight to 8.00 A.M. On 6.9.1989, Supervisor of the Perfect Security Service namely one Agrawal and deceased Naransinh had come for checking and the present appellant accused was found sleeping and, therefore, deceased Naransing asked him to wake up upon which the appellant-accused got enraged and picked up the quarrel. The other security guards and suspervisor separated the appellant and the deceased and thereafter the deceased and supervisor went on scooter. It is alleged that after 8.00 A.M. the security guards came back at the room which they had hired in Ekta Colony, Sector No.27, Gandhinagar. According to the prosecution, appellant-accused is residing at Pethapur and used to supply milk to Supervisor Agrawal. It is alleged that pursuant to the incident happened at about 4.00 A.M. early in the morning, the appellant came at about 8.00 A.M. with knife and asked the deceased who was sleeping at that time to wake up and picked up a quarrel. It is alleged that other security guards were trying to to seperate them. At that time, the appellant accused tok out the knife and gave a blow on the abdomen of Naransinh and after throwing the knife at the said place, appellant accused ran away from the place of

incident. Supervisor was informed who called Ambulence Van but before Amulence van could reach, Naransinh succumbed to the injury. FIR was lodged against the appellant accused for the offence punishable under sections 302, 451 of IPC and sec.135 of the Bombay Police Act and at the conclusion of invetigation, appellant accused was chargesheeted and the accused was committed to the Court of Sessions by the concerned court. Ld. Addl. Sessions Judge, Ahmedabad, at the conclusion of trial, has held the accused guilty for the offences punishable under sections 302, 451 of IPC and vide judgment dated 31.3.1990, convicted and sentenced the appellant accused as aforesaid. Hence, present appeal by the appellant accused.

3. Mr. Nitin M. Amin, ld. counsel appearing for the appellant accused has taken this Court through entire set of evidence from the paper-book and relevant part of judgment of the trial Court. In response to certain querries raised by us and keeping in view the nature of evidence led by the prosecution, ld. counsel Mr. Amin has not pressed this appeal as to the factual findings recorded by the ld. trial Judge and has restricted himself to argue only on the point of altering the conviction from sec.302 of IPC to that under sec.304 Part:II of IPC. Relying on the decision in the case of Kulwant Rai v/s State of Punjab, reported in 1981 SCC (cri.) 826, ld. counsel Mr. Amin has submitted that the trial Court ought not to have convicted the appellant accused for the offence punishable under sec.302 of IPC, but ought to have convicted him for the offence punishable under section 304 Part : II of IPC. In support of his submission, he has placed reliance on para-3 of the judgment which reads as under:-

" When the matter was before the High Court it was trenuously urged that in the circumstances of the case Para 1 of Section 300 would not be attracted because it cannot be said that the accused had the intention to commit murder of the deceased. In fact, that is conceded. More often, a suggestion is made that the case would be covered by Para 3 of Section 300, Indian Penal Code in that not only the accused intended to inflict that particular injury but the injury intended to be inflicted was by objective medical test found to be sufficient in the ordinary course of nature to cause death. The question is in the circumstances in which the offence came to be committed, could it ever be said that the accused intended to inflict that injury which

proved to be fatal. To repeat, there was an altercation. There was no premeditation. It was something like hit and run. In such a case, Para 3 of Section 300 would not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted. In the circumstancaes herein discussed, it would appear that the accused inflicted n injury which he knew to be likely to cause death and the case would accordingly fall under Section 304 Part:II, Indian Penal Code."

4. Ld. counsel Mr. Amin has, therefore, submitted that this is a case of a single blow given by the accused during the hot exchange of words. The victim and accused had no previous enmity or history of quarrel inter-se. According to the case of prosecution, something had happened on the previous night which has resulted into the quarrel in the morning at about 8.00 A.M. Selection of the part of the body for inflicting blow by the accuseed indicates that accused must not be carrying any intention to kill the accused otherwise there was an opportunity for him to give blow directly on chest or any other vital part of the body as deceased Naransinh was unarmed and was sleepinig in the room. Ld. Counsel, therefore, submitted that conviction of the accused should be altered from sec.302 of IPC to that under Sec.304 Part:II of IPC.

5. We have considered the facts available on record. We agree that there is some force in the arguments of ld. counsel Mr. Amin that this case would not fall within the definition of "culpable homicide amounting to murder". However, we are also of the view that this case would also not fall in the category of the offence punishable under sec.304 Part:II of IPC. Deceased Naransinh was sleeping in the room. Accused himself had picked up the quarrel remembering the incident which had occured at about 4.00 A.M. in the morning. There was no reason for him to bring knife with him when he was to distribute milk in colony. His act of giving a fatal blow with a deadly weapon like knife described in the relevant panchanama and the witnesses, was an act which could be punished under sec.304 Part:I of IPC. Accused might not be carrying an intention, but he must have knowledge of the fact that one can die easily if a blow with force is inflicted with a weapon like knife.

5. Ld. APp Mr. Shah, though has initially submitted that the accused should be held guilty for the

offence punishable under sec.302 of IPC, but looking to the nature of injury and the part of the body on which the same is inflicted, submitted that conviction can be altered from sec.302 of IPC to that under sec.304 Part:I of IPC.

6. In view of above submission and for the reasons aforesaid, without going into the detailed discussion of the prosecution case, appeal is partly allowed. Impugned judgment dated 31.3.1990 passed by ld.Additional Sessions Judge, Ahmedabad (Rural) in Sessions Case No. 671/89 convicting the appellant accused for the offence punishable u/s 302 of IPC & sentencing him to suffer R/I for life is hereby altered and appellant accused is hereby convicted for the offence punishable under sec.304 Part : I of IPC and is sentenced to undergo R/I for 10 Years. Sentence as to payment of Fine of Rs.7000/ (Rs. Seven thousand only) I/d to undergo R/I for three months for the offence punishable under sec.302 of IPC as well as sentence to suffer R/I for 3 (three) Years and to pay a fine of Rs.3000/ (Rs.three thousand only),I/d to undergo further R/I for 3 (three months) for the offence punishable under sec.452 of the IPC as well as order to run substantive sentence concurrently, are not altered and the same are hereby confirmed. It is brought on record that accused has already undergone sentence for more than 10 Years and considering the said fact, appellant accused is released on bail at present. Hence, on verification if it is found that accused has not undergone sentence of 10 years including set off, remissions etc., and further if it is found that fine is not paid by the appellant accused as aforesaid, then Non-Bailable Warrant be issued against the appellant accused so that accused can be arrested to serve out the rest of the period of sentence as per this order as well as to serve out order of sentence to be undergone in default of payment of fine. If fine is paid, in that event, the bail bonds of the appellant accused who is at present on bail, shall stand discharged.

22.02.2001 [C.K. BUCH, J]

[H.H. MEHTA, J]

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